ATTORNEY FOR APPELLANT:

RUTH JOHNSON
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

ELIZABETH G. FILIPOW
Marion Count Department of Child Services
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF Do.W., Ri.W., and Ro.W., Minor Children, and their mother, DORIAN WILSON,	)	
DORIAN WILSON,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0610-JV-931
MARION COUNTY OFFICE OF FAMILY AND CHILDREN,	)	
Appellee-Petitioner,	)	
CHILD ADVOCATES,	)	
Co-Appellee (Guardian ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro-Tem
Cause No. 49D09-0602-JT-4069

May 1, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Dorian Wilson ("Dorian") appeals the trial court's order terminating her parental relationship with her children Do.W., Ri.W., and Ro.W.

We affirm.

ISSUES

1. Whether the trial court's refusal to grant a continuance for Dorian's counsel to secure Dorian's presence at the termination of parental rights hearing constituted an abuse of discretion.

2. Whether the trial court's order terminating the parent-child relationship between Dorian and the children was an improper summary default order.

FACTS

Separated parents, Dorian and her husband, Ricky,[1] are the biological parents of four children: De.W., Do.W., Ri.W., and Ro.W. In 2003, largely due to Dorian's substance abuse problems, the children were adjudicated as Children in Need of Services ("CHINS") and removed from Dorian's care. Subsequently, the juvenile court awarded custody of the children to Ricky. In March 2005, Marion County Child Protection Services ("CPS") received an anonymous tip alleging that "these kids were living with their mother," and that Dorian was using cocaine and working as a prostitute. Tr. 48-49.

CPS investigator, Dee Eyers ("Eyers") learned that Dorian was receiving temporary aid for needy families (TANF) and food stamps "based on all of the children

[1] Ricky is not a party to this appeal.

living with her" at her sister's home. *Id*. at 50. Eyers visited the residence to inquire about the children. At first, Dorian claimed to be baby-sitting them while Ricky worked. Then, she claimed to have custody of the children pursuant to a court order; however, Dorian was unable to produce the court order. Dorian then admitted that "[the children] were living with her" at her sister's home. *Id*. at 51-52.

Eyers inspected the residence and observed Dorian's five-year-old child "sleeping in [a second floor bedroom] on a twin bed [without sheets], about a foot away from an open window with no screen on it." *Id*. at 52. When Eyers voiced her concern "that he could roll out though the window," Dorian responded, "Oh he won't do it." *Id*. at 53. Eyers inspected the house further and observed that

> [t]he home was dirty. The kitchen had food incrusted [sic] throughout the kitchen on the sink, on the dirty dishes, food incrusted [sic] in the refrigerator. The bathroom was filthy, smelled strongly of urine. Toilet was not flushed.

Id. Eyers notified her supervisor about the living conditions that she had observed and received authorization to remove the children.[2] *Id*. at 56.

Eyers determined that the CHINS allegations had been substantiated,[3] basing her conclusion on the following: (1) "the fact that [Dorian] had the children back in her care, without any legal change of custody"; (2) Dorian had no job; (3) Dorian and her four children had no home and were living with her sister's family of five; (4) the "unstable

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[2] Only two of the children were present at the time. After the CHINS dispositional hearing on May 26, 2005, the remaining two children were removed from Dorian's care.

[3] Eyers testified that for CPS's purposes, "[s]ubstantiated means that we have found sufficient evidence that our office feels the children are in need of services [CHINS]." (Tr. 58).

and filthy" condition of Dorian's sister's home; and (5) the unsafe sleeping arrangements for Dorian's five-year-old son. *Id*. at 58-59.

The Marion County Department of Child Services ("the MCDCS") filed a CHINS petition against Dorian on March 24, 2005, alleging child endangerment and violation of a previous custody order. On April 28, 2005, the trial court conducted a trial on the CHINS petition and adjudicated the children as CHINS. On May 26, 2005, the trial court conducted a dispositional hearing, after which it removed the children from Dorian's care and issued a parental participation decree, under which

> Dorian Wilson was ordered, among other requirements, to notify the case manager of any changes in address or telephone number within five days of said change, contact the Case manager on a weekly basis in order to allow her to monitor compliance with the Court's orders, complete a parenting assessment and successfully complete all resulting recommendations, complete a drug and alcohol assessment and successfully complete all resulting recommendations, secure and maintain a legal and stable source of income adequate to support her children, obtain and maintain suitable housing for the children, and visit the children on a regular consistent basis.

State's Br. 3-4. The children were placed in foster homes, with Ri.W. and Ro.W. placed together, and De.W. and Do.W. placed separately.

Parenting assessor Barbara Brands ("Brands") had performed Dorian's parenting assessment[4] in April of 2005. At the assessment, Dorian admitted to recent marijuana and cocaine use, claiming "[t]hat she had last used cocaine a week prior" to meeting with Brands. However, she "tested positive for cocaine," indicating that she had used cocaine

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[4] The aim of the assessment was to review the various areas that "affect [Dorian's] ability to parent children," including her (1) previous history with CPS; (2) upbringing; (3) current relationships; (4) educational background; (5) employment history; (6) communication and problem solving skills; (7) criminal history; and (8) the reasons for CPS's prior involvement. Tr. 62.

within the previous forty-eight hours. Tr. 65. Brands determined that Dorian had "relapse[d]" and she recommended that Dorian complete periodic drug screens, inpatient treatment and an intensive outpatient treatment, before she could be reunited with her children. *Id*. at 67. Brands concluded, in her report, that Dorian "loves her children, the children love her," but determined that the prognosis for reunification was "poor." *Id*. at 70. In support of her prognosis, Brands cited

> concerns that this was the second involvement with CPS in less than two years. The issues of marijuana and cocaine use. The concerns of not having stable housing or employment to provide for the children, and concerns about the on again, off again relationship with [Ricky], and that there had been incidents of violence in their relationship.

Id. at 70-71.

Dorian's case was transferred to a new case manager,[5] Aziza Bryant ("Bryant"). When Bryant received the case file, she unsuccessfully "tried to contact all parties in the case." *Id*. at 36. Despite the trial court's order that she contact the case manager on a weekly basis, Dorian did not contact the MCDCS after Bryant took over the case.[6]

On February 1, 2006, the MCDCS filed a petition for involuntary termination of the parent-child relationship between De.W.[7], Do.W., Ri.W., and Ro.W. and their parents, Dorian and Ricky Wilson. Dorian appeared for her initial hearing and public

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[5] Bryant testified that "around the first week of July [2006]," she received the case from the prior case manager who had "relocated to Washington State." *Id*. at 33, 45.

[6] Bryant served as Dorian's case worker from early July until the termination trial (September 6, 2006).

[7] On September 6, 2006, at the involuntary termination hearing, the trial court granted the MCDCS' oral motion to dismiss as to De.W., "for multiple reasons, as she is 17 years of age. She does not wish to be adopted. The current plan for her permanent care is a sensible one and furthermore, to leave her without parents, would not be in her best interest, because there is not an alternate parent stepping forward . . . ." Tr. 14.

defender, Janice Smith, was appointed to represent her. Dorian received and signed an Advisement for Parents Regarding Proceedings to Involuntarily Terminate the Parent-Child Relationship.

On May 15, 2006, Dorian and her attorney attended a facilitation,[8] at which time the September 6, 2006, trial date was set. On August 3, 2006, the Public Defender Agency filed notice of substitution of counsel, replacing Janice Smith with Barbara Clements ("Clements") after a reorganization of its juvenile division. On August 25, 2006, case manager Bryant mailed a letter to Dorian's last known address notifying her of the involuntary termination trial setting.

Neither Dorian nor Ricky were present at the trial on September 6, 2006. Clements moved for a continuance, which the trial court denied.[9] The MCDCS called its witnesses, and Clements cross-examined them and objected to certain testimony. Brands testified that Dorian had completed an inpatient program, but never completed outpatient treatment. Nor had she submitted to any drug screens in 2006.[10] The MCDCS and the

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[8] A facilitation or facilitated negotiation is "a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution" or conciliation. Black's Law Dictionary 1003 (8th ed. 2004).

[9] Specifically, attorney Clements told the trial court, "Today is September the 6th. I received my cases from the Public Defender Officer on August 5th, which was a Saturday. I have not contacted Dorian Wilson, nor have I heard from Dorian Wilson. For that reason, I would move for continuance because she is the mother of these children. She's not present today. And I do not believe that I have effectively attempted to contact her to . . . secure her presence at this hearing, and I believe that she needs to be here to provide me with advice and information so that I can appropriately defend her." *Id*. at 11. The trial court denied Clements' motion finding that notice of the hearing was sent to Dorian's last known address, and further, that she was advised in open court of the trial date.

[10] At trial, case manager Aziza Bryant testified that "as far as drug screens though, the last Court ruling regarding that, was that parents must complete five consecutive, clean [drug] screens in order . . . have

court-appointed guardian ad litem, Tiffany Warren ("GAL Warren") recommended adoption – citing Dorian's absence, her "continued drug use" and failure to complete court-ordered services, and the fact that the children had been out of her care for over a year and had bonded with their foster parents.[11] *Id*. at 84.

After the hearing, the judge stated

> [t]hese are the saddest situations where you have a number of children. You have some bonding that was testified to. You have parents that have drug addiction and cannot pull it together. These parents have not visited for over a year. The children were removed from the home under the CHINS matter . . . . They've been removed well over six months.
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> That the situation has not changed. The children have been removed. The problems that resulted in their removal have not been remedied. . . . [N]othing has changed. A continuation poses a threat to these childrens' [sic] well-being. That while the parents did do the parenting assessment and the drug assessment, and [Dorian] actually completed the inpatient drug treatment[,] [s]he did not complete the other services that were required.
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> * * *
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> I don't find that I have any other option but to terminate the parental rights of both Dorian Wilson and Ricky Wilson. That it's in the best interest of all three children . . . that [the MCDCS] has a satisfactory plan for the[ir] care and treatment.
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> * * *
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> That they have a home where [Ri.W. and Ro.W.] can remain together. They have a home where Do.W. can stay. And they have a plan for on-going contact, and that on-going contact will continue and amazingly, the on-going contact will continue with [De.W.] as well. And I, I don't have

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their visits reinstated and since that was declared in Court, I've received no screens. . . . Actually, for the whole year of 2006." Tr. 36. Dorian's visitation was suspended in July of 2005. *Id*. at 83.

[11] GAL Warren testified that Do.W. calls her foster parent " mommy," and Ri.W. and Ro.W. call their foster parent, "Me-Me." *Id*. at 82. GAL Warren added that the children "have stated that they love their parents and would like to see them, but unfortunately, because the parents have not completed services or participated, that hasn't occurred." *Id*. at 84.

> any other option then [sic] to decree an order[12] that in the best interest of the children, that parental rights be terminated.

Id. at 88. (Emphasis added). Dorian now appeals from the trial court's order.

DECISION

Dorian argues that the trial court abused its discretion by denying her counsel's motion to continue and further, by "issuing a conclusory Default order when there was a hearing on the merits." Dorian's Br. 5.

As regards the termination of parental rights, we recently noted that

> [w]hen reviewing termination of parental rights proceedings on appeal, we neither reweigh the evidence nor judge the credibility of witnesses. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn from that evidence. In deference to the trial court's unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous. If the evidence and inferences support the trial court's decision, we must affirm.
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> The involuntary termination of parental rights is the most extreme sanction that a court can impose. Termination severs all rights of a parent to his or her children. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities.

In re Termination of Parent-Child Relationship of A.W., 858 N.E.2d 256, 256 (Ind. Ct. App. 2006); internal citations omitted.

1. Motion to Continue

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[12] The trial court also noted that the order "will show default [b]ecause of the nature of the [court's] quest [computer] system, . . . these orders will both be trials on the merit and will actually be shown as such. That there was evidence presented, [and] testimony heard." *Id*. at 87. The parties do not dispute the fact that the trial court conducted a hearing on the merits.

Dorian first argues that the trial court erred when it denied her counsel's motion to continue the termination hearing and proceeded in her absence. She contends that in so doing, the court violated her procedural due process rights. The Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006). When the State seeks to terminate the parent-child relationship, it must do so in a manner that comports with the requirements of due process. *Id*. The nature of the process due in a termination of parental rights proceeding turns on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003). We must identify the precise nature of the private interest threatened by the State before we can properly evaluate the adequacy of the State's process. *Id*.

In this case, both the private interests and the countervailing governmental interests affected by the proceeding are substantial. This action involves "a parent's interest in the care, custody, and control of her child, which as been recognized as one of the most valued relationships in our culture." In re *E.E.*, 853 N.E.2d at 1043.

> Moreover, it is well settled that the right to raise one's child is an essential, basic right that is much more precious than property rights. As such a parent's interest in the accuracy and justice of the decision is commanding.

In re E.E., 853 N.E.2d at 1043. Also noteworthy, however, is the State's *parens patriae* power to intervene when parents neglect, abuse, or abandon their children. *In re T.H.*,

856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006). "Delays in the adjudication of a case impose significant costs upon the functions of government as well as an intangible cost to the lives of the children involved." *In re E.E.*, 853 N.E.2d at 1043.

At trial, parenting assessor Brands testified that "[Dorian] and her children appear to have a strong parent/child bond," and "Dorian appeared to appropriately love and nurture her children." Tr. 70, 76, 77. However, Brands added that for reunification to occur, Dorian was required to complete the court-ordered services, and had not done so.

On May 15, 2006, Dorian was advised in open court of the termination hearing date. In violation of the participation decree, she failed to keep the MCDCS apprised of her contact information. When case manager Bryant's efforts to contact Dorian by telephone failed, Bryant mailed notice of the hearing to Dorian's last known address.

Dorian had suffered a drug relapse and, during this period, failed to complete the court-ordered services, including outpatient treatment and drug screens. In addition, she was unable to demonstrate stability in either housing or income sufficient to support her children. Meanwhile, the children bonded with their foster parents, and the MCDCS' permanency plan contemplated adoption into these foster households.

When balancing the competing interests of a parent and the State, we must also consider the risk of error created by the challenged procedure. Dorian argues that had she been present, "she could have provided her counsel with additional information in support of maintaining her parental rights." Dorian's Br. 10. However, we find that Dorian's rights were not significantly compromised. In her absence, attorney Clements cross-examined the State's witnesses, heard the State's evidence, and objected on

Dorian's behalf. Further, as Dorian correctly observes, she did not have a constitutional right to be present at the termination hearing. *In re E.E.*, 853 N.E.2d at 1044.

Given the following, we conclude that the risk of error caused by the trial court's denial of the continuance was minimal: (1) Dorian's attorney represented her interests and cross-examined witnesses in her absence; (2) Dorian received proper notice; (3) Dorian failed to comply with the court-ordered services; (4) Dorian did not have a constitutional right to be present at the termination hearing; (5) Dorian failed to provide either the trial court or this court with adequate reason or cogent argument as to why she failed to keep in contact with her case manager and her attorney, or why she failed to appear for the termination trial. After balancing Dorian's substantial interest with that of the State, and in light of the minimal risk of error by the trial court's denial of Dorian's counsel's request for a continuance, we find that the trial court's denial of Dorian's attorney's requested continuance and its decision to proceed in Dorian's absence did not deny Dorian procedural due process.

2. Order

Next, Dorian argues that the trial court's "inadequate"[13] order deprived her of procedural due process because it "lack[ed] any specific facts" as to why her parental rights were terminated. Dorian's R. Br. 4. Further, Dorian argues that the trial court's findings, titled "DEFAULT," do not "adequately reflect that there was a hearing on the merits nor do they provide the facts and conclusions of law necessary for an appropriate

[13] We note that the trial court's order could have been more fact-specific and more thoroughly developed; however, the trial court's failure to issue such an order does not amount to reversible error.

appeal and review of the merits of the court's decision terminating parental rights." *Id*. at 3-4. She urges us to "remand for findings of fact and conclusions of law which would provide [her] with the necessary judicial findings and supporting authority from which to appeal . . . the court's judgment." Dorian's Br. 11.

We will first address Dorian's claim that the trial court's order is titled in a manner that does not adequately reflect that there was a hearing on the merits. When we construe a judgment, we "look at the entire record, including but not limited to the complaint, findings, argument, and evidence, to ascertain its meaning and effect." *Singh v. Singh*, 844 N.E.2d 516, 525 (Ind. Ct. App. 2006). At the close of Dorian's trial, the trial court explained that the order would be titled 'DEFAULT' "[b]ecause of the nature of the [Marion County] quest [computer] system. [T]hese are both trials on the merit and will actually be shown as such. That there was evidence presented, [and] testimony heard." Tr. 87. Additionally, in her reply brief, Dorian states that she and the MCDCS "agree that there was [a] trial on the merits in this case." Dorian's R. Br. 3. Thus, we find that the trial court's titling of its order as "DEFAULT" did not amount to reversible error.

Next, regarding Dorian's claim that the trial court's order did not provide the facts and conclusions of law necessary for an appropriate appeal, we apply the following standard of review. When reviewing a trial court's findings of fact and conclusions of law made in connection with involuntary termination of parental rights, we must first determine whether the evidence supports the findings; and second, whether the findings support the judgment. *Payday Today, Inc. v. McCullough*, 841 N.E.2d 638, 642 (Ind. Ct.

App. 2006). Again, we will consider the entire record to ascertain the meaning and effect of the judgment. *Singh*, 844 N.E.2d at 525.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code section 31-35-2-4(b)(2). *In re A.W.*, 858 N.E.2d at 256. Thus, the State must prove that:

> (A) one (1) of the following exists:
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
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> (B) there is a reasonable probability that:
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
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> (C) termination is in the best interests of the child; and
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> (D) there is a satisfactory plan for the care and treatment of the child.

In re A.W, 858 N.E.2d at 256; I.C. § 31-35-2-4(b)(2).

The trial court's order closely mirrors the language of Indiana Code section 31-35-2-4(b)(2). First, the court found that the children had been removed from Dorian's care for at least six months under a CHINS dispositional decree. Do.W., Ri.W., and Ro.W. were adjudicated as CHINS on April 28, 2005. On May 26, 2005, the trial court removed the children from Dorian's care. By the time Dorian's parental rights were terminated on

September 6, 2006, Do.W., Ri.W., and Ro.W. had been out of her care for over fifteen months. Thus, the trial court's finding that the children had been out of Dorian's care for at least six months under a CHINS dispositional decree was not clearly erroneous.

Second, the trial court found that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied. The court also found that a reasonable probability existed that the continuation of the parent-child relationship would threaten the well-being of the children. Dorian's children had already been removed from her care on a previous CHINS adjudication in 2003, when CPS received information that they were again living with her in 2005. Parenting assessor Brands testified that the 2003 adjudication stemmed from "there not being food or electricity in the home" and "concerns of cocaine and marijuana use." Tr. 63-64. Dorian's substance abuse problems persisted, and during her parenting assessment, she admitted to using cocaine "almost daily" in March of 2004. *Id*. at 66.

After Dorian resumed physical custody of her children in violation of the 2003 court order, she and her children lived with her sister's family of five in "dirty," "filthy," and "risk[y]"conditions. *Id*. at 53. At her parenting assessment, Dorian admitted to continued marijuana and cocaine use, and tested positive for cocaine. Brands concluded that Dorian had suffered a relapse, and did not understand the gravity of her addiction. Brands recommended outpatient treatment, but Dorian did not comply. Dorian's addictions, her turbulent marriage, and her unstable housing and employment led Brands to issue a "poor" prognosis for the reunification. *Id*. at 70.

Given these facts, the trial court's findings that (1) a reasonable probability existed that the conditions that resulted in the children's removal from Dorian's home would not be remedied; and (2) that a reasonable probability existed that the continuation of the parent-child relationship threatened the children's well-being were not clearly erroneous.

Third, the trial court found that termination of the parent-child relationship between the children and Dorian was in the children's best interests. Brands testified that she "believe[d] that the children could be at risk if placed back with their parents." *Id*. at 73. She explained that the biggest risk factors were the parents' drug use, their issues of domestic violence and housing, and their lack of stable housing. Brands testified that

> [i]n terms of substance abuse, if a parent is under the influence, they [sic] . . . don't have the mental ability to deal with an emergency, if a child is injured or if there's a conflict. Even if a parent is not under the influence at the time, it takes away from income to support the family. . . . [As for the] domestic violence, my concern was, that if children are exposed to that, sometimes children try to intervene and get in the middle and they could get hurt. Or it affects a child's ability to deal with [his or her] own anger . . . . And my concern about housing was that, that the children needed a stable, safe place to sleep every night. And to be protected from the outside environment.

Id. at 73. Thus, we conclude that the trial court's finding that termination of the parent-child relationship was in the children's best interests was not clearly erroneous.

Finally, the trial court found that the MCDCS had a satisfactory plan for the children's care and treatment. Case manager Bryant testified that if Dorian's parental rights were terminated, the MCDCS' plan was to arrange for adoption into their respective foster homes. GAL Warren testified that the children had bonded with their foster mothers, adding that the foster parents were committed to allowing the children to

"continue meeting with each other" and with their older sister De.W., who was not a party to the termination. We conclude that the trial court's finding that the MCDCS has a satisfactory plan for the care and treatment of the children was not clearly erroneous.

We reject Dorian's claim that the trial court failed to provide the facts and conclusions of law necessary for an appropriate appeal, and we find that the State presented clear and convincing evidence to effect involuntary termination.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.